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CHARLES ELMORE C

IN THE

Supreme Court of the United States

OCTOBER TERM, 1930

No. 333

LOUISVILLE & NASHVILLE RAILROAD COMPANY, ILLINOIS CENTRAL RAILROAD COMPANY, THE BALTIMORE & OHIO RAILROAD COMPANY, THE CHESAPEAKE & OHIO RAILWAY COMPANY, and CLEVELAND, CINCINNATI, CHICAGO & ST. LOUIS RAILWAY COMPANY, who sue, etc.,

Appellants,

v.

UNITED STATES OF AMERICA and INTERSTATE COMMERCE COMMISSION,

Appellees.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY

MOTION OF APPELLANTS TO ADVANCE

EDWARD S. JOUETT,
R. V. FLETCHER,
JOHN J. CORNWELL,
ROBERT B. TUNSTALL,
H. N. QUIGLEY,
ALFRED P. THOM, JR.,
ALFRED P. THOM,
Solicitors for Appellants.

HAYWOOD PRINTING COMPANY WASHINGTON D. C.

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The appellants in the above entitled cause respectfully move that this case be advanced for an early hearing, and, in support of their motion, make the following brief statement of the matters involved and the reasons relied on.

This is a suit in equity, brought under the

Urgent Deficiency Appropriation Act, of October 22, 1913, to suspend, restrain, enjoin, annul and set aside so much of two certain orders of the Interstate Commerce Commission, one entered on the 4th day of November, 1929 (a copy of which is printed in the record at page 10), and the other on the 30th day of July, 1929, amending its previous Pass Regulations (a copy of which is found printed in the record at pages 44 and 45), as undertake to declare unlawful and to prohibit the transportation or movement free and without charge, by one carrier subject to the Interstate Commerce Act, of the private or business cars of another such carrier when occupied by a person or persons using and lawfully entitled to use free transportation, or undertake to declare unlawful and to prohibit the accessorial transportation or movement of such cars in connection with or as incidental to such free transportation.

The case was heard by a court of three judges as required by the statute, and the final judgment or decree of the district court was entered on the 13th day of June, 1930, a copy of which is printed in the record at page 107. The effect of said orders of the Commission and of the decree appealed from is to prevent carriers engaged in interstate commerce from pursuing a practice which was universally engaged in by the carriers up to the time of the orders of the Interstate Commerce Commission complained of and which, to the extent in this cause complained of, is essential to the orderly and convenient conduct of the petitioners' business.

Much of a railroad officer's time is spent in

traveling, not only over his own lines, but to points on the lines of other railroads, in connection with questions of management and operation as well as of financial and other executive policies. As a part of the every-day business and affairs of his railroad, he must attend meetings and conferences with officers of other lines; must appear at hearings before the Interstate Commerce Commission and before State commissions; must be subject to the call of the President, of the Governors of States and other public officials concerned with matters and policies of transportation; and must attend meetings with civic, industrial and commercial bodies representing important public interests.

Such journeys frequently necessitate his absence from headquarters for weeks at a time. Day in and day out he is receiving and handling mail and business documents requiring his personal attention and executive authorization pertaining to the conduct of his railroad work in as great, if not in greater, volume than is necessary in any other line of business. He must take with him important and voluminous papers and office assistance, as he is liable to be confronted with urgent matters of business requiring immediate attention yet not pertinent to the particular trip. The necessity arises, in the interest of expedition and successful administration, for the carrying of considerable records, files, correspondence, papers, profiles, blueprints and necessary clerical forces. He must have all these at hand in order to administer, without hurtful delay, the affairs of the rail-

road. He takes them in what is known as a private, office or business car and this car is, in reality, the same as his office and, for the successful conduct of his work, he requires much the same facilities for working on these journeys as are available at his headquarters. This is equally true whether he is on his own or on a foreign line.

Seasonal inspection trips of their own properties and the study and inspection of the properties of others are universally recognized as necessary to good management and as having high educational value. On these trips the President and other executive officials, and sometimes a part or all of the board of directors, compose the party. Not infrequently much time and expense can be saved by a short cut outbound or returning home over foreign lines.

It frequently happens that the President of a railroad company, in connection with the finances of his company and for the purpose of attending meetings of his board of directors, must visit financial centers like New York, Chicago, Boston and others, and this is as much true of carriers whose lines do not reach these centers as it is of those that do. As the necessity for attending to the financial affairs of his railroad and for consultation with and meetings of his board of directors may require long absence from his own line, it is essential that he should have at these off-line points his files and other necessary documents so that he may there attend to the daily administration of his company's affairs. These are carried

and are made available to him and to his office force by these business or office cars.

In fact, the Commission's report in this case (record, p. 134), recognizes such car as an important facility for carrying on the business of the road, where it says:

> The private cars of railroad officials are intended to be offices on wheels for those whose duties require considerable travel over the line, and when used for that purpose are an important facility for carrying on the business of the road.

The foregoing are illustrations of the importance of the use of private, office or business cars on foreign lines, but the appeal embraces as well other uses which are alleged to be lawful if the car is occupied by a person or persons using and entitled to use free transportation.

Such movements have, up to the time of the orders complained of, been made free and without imposing any charge, and this practice has existed from the earliest days of steam railroads. To disrupt and disturb it, as is done by the orders complained of, creates an entirely different and very onerous and inconvenient method of operating the properties, justified only if the practice is illegal.

The orders complained of affect all the railroads in the United States, about 270,000 miles in extent, and, in an important particular, control their daily operations.

In view of this wide influence of the Commission's action, it is of great importance that the

carriers should be advised at as early a date as possible as to the law applicable to the case and that the Interstate Commerce Commission should likewise be advised of what the law is, in order that they may properly administer the regulatory powers conferred upon them by the Interstate Commerce Act.

Wherefore the appellants pray that the case be advanced on the calendar and assigned for a hearing at an early date.

Respectfully submitted,

EDWARD S. JOUETT,
R. V. FLETCHER,
JOHN J. CORNWELL,
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ALFRED P. THOM, JR.,
ALFRED P. THOM,
Solicitors for Appellants.

October 23, 1930.
Copy received and service accepted.
(Signed) THOMAS D. THACHER,
Solicitor General.

October 29, 1930.
Copy received and service accepted.
(Signed) DANIEL W. KNOWLTON,
Chief Counsel,
Interstate Commerce Commission.